

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VISA U.S.A. INC., a Delaware corporation,

Plaintiff,

v.

FIRST DATA CORPORATION, a Delaware corporation; FIRST DATA RESOURCES, INC., a Delaware corporation; and FIRST DATA MERCHANT SERVICES CORPORATION, a Florida corporation,

Defendants.

AND RELATED COUNTERCLAIM.

MISC. No. _____

Northern District of California
Case No. C-02-1786 JSW-EMC

MOTION TO COMPEL AND REQUEST FOR ORDER TO SHOW CAUSE

First Data Corporation, First Data Resources Inc. and First Data Merchant Services Corporation (collectively, "First Data") hereby move to compel deposition testimony pursuant to a duly authorized subpoena issued from this Court and for the issuance of an order to show cause, and respectfully represent as follows:

1. On March 29, 2005, First Data Corporation, First Data Resources Inc. and First Data Merchant Services Corporation (collectively "First Data"), defendants and counterclaimants in the above-captioned action, served a Subpoena pursuant to Federal Rule of Civil Procedure 30(b)(6) on third party Visa Europe Services, Inc. ("VESI").

2. VESI is incorporated under the laws of the State of Delaware, and is therefore a citizen of this State subject to this Court's jurisdiction. *See BAE Systems Aircraft Controls, Inc. v. Eclipse Aviation Corp.*, 224 F.R.D. 581, 589 (D. Del. 2004); *see also Reach and Assocs., PC*

v. Dencer, 269 F. Supp 2d 497, 502 (D. Del. 2003).

3. The Subpoena set the deposition of VESI's corporate representative(s) for April 8, 2005, at 9:00 a.m. in Wilmington, Delaware.

4. On April 7, 2005, the day before the scheduled deposition, VESI informed First Data that it would not appear.

5. VESI's reasons for refusing to appear for the deposition are not well founded, and to date, VESI has not moved this Court for a protective order limiting or excusing its appearance for the deposition.

6. First Data has made reasonable attempts to resolve the issues giving rise to VESI's refusal to appear for the deposition, but First Data's attempts have not been successful.

7. First Data had a critical need to take VESI's deposition with sufficient time to use the testimony to complete its expert reports prior to their required disclosure on April 29, 2005. First Data now has an even more urgent need to complete the deposition prior to the required disclosure of its rebuttal expert reports on May 20, 2005.

8. First Data therefore moves the Court for an order compelling VESI's immediate attendance at the deposition in Delaware no later than May 10, 2005. First Data also requests that the Court issue an Order to Show Cause why VESI should not be held in contempt pursuant to Federal Rule of Civil Procedure 45(e).

9. First Data's Motion to Compel and Request for an Order to Show Cause are supported by an accompanying memorandum and the Declaration of Thomas S. Clifford.

WHEREFORE, First Data respectfully requests that the Court enter (i) an order compelling immediate attendance at a deposition in Delaware no later than May 10, 2005, and (ii) an order to show cause why VESI should not be held in contempt of court.

DATED: May 2, 2005

Respectfully submitted:

By: 

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- and -

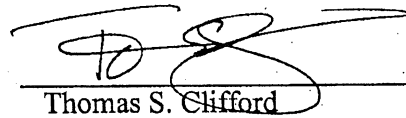
Geraldine M. Alexis (Cal. Bar No.
213341)
Beth H. Parker (Cal. Bar No. 104773)
David P. Chiappetta (Cal. Bar No.
172099)
Thomas S. Clifford (Cal. Bar No.
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San Francisco, California 94111-4067
Tel.: (415) 393-2000
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Attorneys for Defendants,
Counterclaimants and Moving Parties
FIRST DATA CORPORATION, FIRST
DATA RESOURCES INC., and FIRST
DATA MERCHANT SERVICES
CORPORATION

CERTIFICATION OF GOOD FAITH EFFORTS

Pursuant to Rule 7.1.1 of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware, I hereby certify that counsel for defendants, counterclaimants and moving parties First Data Corporation, First Data Resources Inc. and First Data Merchant Services Corporation has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion, and has been unable to reach such agreement.

Dated: May 2, 2005


Thomas S. Clifford

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VISA U.S.A. INC., a Delaware corporation,

Plaintiff,

V.

FIRST DATA CORPORATION, a Delaware corporation; FIRST DATA RESOURCES, INC., a Delaware corporation; and FIRST DATA MERCHANT SERVICES CORPORATION, a Florida corporation,

Defendants.

AND RELATED COUNTERCLAIM.

MISC. No. _____

Northern District of California
Case No. C-02-1786 JSW-EMC

**ORDER COMPELLING VISA EUROPE SERVICES, INC. ("VESI")
TO APPEAR FOR DEPOSITION**

On May 2, 2005, defendants and counterclaimants in the above-captioned action First Data Corporation, First Data Resources Inc., and First Data Merchant Services Corporation (collectively “First Data”) filed a motion for an order compelling Delaware corporation Visa Europe Services, Inc. (“VESI”) to appear for deposition and show cause why it should not be held in contempt pursuant to Federal Rule of Civil Procedure 45(e) for its failure to comply with a duly noticed deposition subpoena.

After full consideration of the arguments and evidence submitted by the parties,
and for good cause shown, IT IS HEREBY ORDERED AND ADJUDGED that:

1. VESI is to immediately meet and confer with First Data to schedule the deposition of VESI that will take place in Delaware. The deposition shall be conducted no later than May 10, 2005.

DATED: May , 2005

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VISA U.S.A. INC., a Delaware corporation,

Plaintiff,

V.

FIRST DATA CORPORATION, a Delaware corporation; FIRST DATA RESOURCES, INC., a Delaware corporation; and FIRST DATA MERCHANT SERVICES CORPORATION, a Florida corporation,

Defendants.

AND RELATED COUNTERCLAIM.

MISC. No.

Northern District of California
Case No. C-02-1786 JSW-EMC

**ORDER COMPELLING VISA EUROPE SERVICES, INC. (“VESI”)
TO SHOW CAUSE WHY IT SHOULD
NOT BE HELD IN CONTEMPT OF THE COURT**

On May 2, 2005, defendants and counterclaimants in the above-captioned action First Data Corporation, First Data Resources Inc., and First Data Merchant Services Corporation (collectively “First Data”) filed a motion for an order compelling Delaware corporation Visa Europe Services, Inc. (“VEST”) to appear for deposition and show cause why it should not be held in contempt pursuant to Federal Rule of Civil Procedure 45(e) for its failure to comply with a duly noticed deposition subpoena.

After full consideration of the arguments and evidence submitted by the parties,
and for good cause shown, IT IS HEREBY ORDERED AND ADJUDGED that:

1. VESI shall appear before this court on May ___, 2005 at _____ a.m./p.m. to show cause why it should not be held in contempt for failure to comply with the subpoena. VESI shall file any responsive pleading no later than 4:30 p.m. on May ___, 2005. The contempt order following the hearing on the order to show cause may include, but not be

limited to, First Data's costs and fees in filing this motion and any other sanctions the court deems appropriate.

DATED: May ____, 2005

United States District Judge

CERTIFICATE OF SERVICE

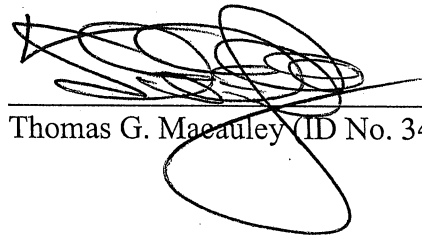
I hereby certify that on this 2nd day of May 2005, a copy of the foregoing Motion To Compel and Request for Order To Show Cause, as well as the accompanying memorandum in support and the supporting declaration of Thomas S. Clifford was served as follows:

BY HAND DELIVERY

Visa Europe Services, Inc.
c/o The Corporation Trust Co.
1209 Orange Street
Wilmington, DE 19801

BY FEDEX AND ELECTRONIC MAIL

Christine Royce-Lewis
Visa Europe Services, Inc.
1 Sheldon Square
London W25TT
United Kingdom

A handwritten signature in black ink, appearing to read 'Thomas G. Macauley', is written over a horizontal line. The signature is stylized with loops and a large 'X' at the beginning.

Thomas G. Macauley (ID No. 3411)